

(2003) 6 AWC 4622 : (2003) 3 UPLBEC 2561

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 39842 of 2001

Kendriya Karamchari
Sahkari Grih Nirman
Samiti Ltd.

APPELLANT

Vs

New Okhla Industrial
Development Authority
(NOIDA)

RESPONDENT

Date of Decision: Aug. 5, 2003

Acts Referred:

Constitution of India, 1950 " Article 14, 226#Land Acquisition Act, 1894 " Section 4, 6

Citation: (2003) 6 AWC 4622 : (2003) 3 UPLBEC 2561

Hon'ble Judges: R.S. Tripathi, J; M. Katju, J

Bench: Division Bench

Advocate: J.C. Gupta and Co, for the Appellant;

Final Decision: Allowed

Judgement

M. Katju, J.

This writ petition has been filed for a writ of certiorari to quash the impugned order dated 5.5.1998, Annexure-R to the writ

petition by which the respondent has cancelled the allotments of land made in favour of the members of the petitioner Society on the ground that

the same had been obtained by misrepresentation and fraud. The petitioner has also prayed for a mandamus directing the respondent New Okhla

Industrial Development Authority (NOIDA) not to allot plots of the said land earlier earmarked for the members of the petitioner Society in

Sections 42 and 43 NOIDA in any one else's favour.

2. Heard learned Counsel for the parties.

3. The petitioner is a Co-operative Housing Society registered under the U.P. Co-operative Societies Act, 1965. It was registered in 1975. It was

primarily formed for acquisition and development of land and allotment of the same to its members for construction of their residential units. The

main object of the petitioner Society was to enable its members to acquire plots of land on a comparatively low price on affordable terms.

4. After registration of the Society it purchased land for the aforesaid purpose in village Chhallera from the funds contributed by its members as

well as the funds lying in the Society being members funds. It is alleged in Paragraph 3 of the writ petition that between 1967 to 1976 there were

16 Co-operative Housing Societies formed for similar purpose in the vicinity of the petitioner Society.

5. The respondent NOIDA is an authority constituted under the U.P. Industrial Areas Development Act, 1976 for development of certain notified

area in the State as industrial and urban township. Immediately after its constitution the NOIDA issued a notification u/s 9 of the aforesaid Act,

imposing ban on erection of building in contravention of its Regulations within the notified area. It is alleged in Paragraph 6 of the writ petition that

in its first meeting on 24.4.1976, NOIDA discussed the prospects with the Co-operative Housing Societies whose land had been acquired for the

purpose and benefits of NOIDA.

6. In its 15th Board meeting on 19.6.1977, the NOIDA constituted subcommittee under the Chairmanship of Sri B.J. Khodaiji, Commissioner and

Secretary, Housing and Urban Development Department, U.P. (known as the Khodaiji Committee) to negotiate with the representatives of various

Co-operative Societies who had purchased the land for NOIDA area. The said Committee held several meetings and then submitted its report

known as the Khodaiji Committee report vide Annexure-A to the writ petition. The details of the recommendations of the Committee are

mentioned in Paragraph 11 of the writ petition.

7. In its held on 6.11.1979 NOIDA considered the recommendations of the Khodaiji Committee report and approved the same with some

modifications. These modifications are mentioned in Paragraph 12 of the writ petition. Thereafter by letter dated 21.4.1980 addressed to the

General Secretary, Federation of Co-operative House Building Societies, New Delhi, NOIDA offered developed plots at Rs. 130/- per sq. mtrs.

in certain sectors for the members of the various Co-operative Housing Societies including members of the petitioner Society. The details are given

in Paragraph 13 of the writ petition. Pursuant to the aforesaid letter NOIDA by its letter dated 21.04.1980/15.5.1980 allotted land to the extent of

40% of the total acquired land to 11 Societies at concessional rate of Rs. 130/-per sq. mtrs. The names of these 11 Societies are mentioned in

Paragraph 14 of the writ petition. It is alleged in Paragraph 15 of the writ petition that while allotting the plotted land to the members of these

eleven Co-operative Societies the NOIDA has followed the criteria of allotting 40% of the acquired land of each Society and in none of these

cases the respondent ever raised the question of mutation or the compensation paid at that time in terms of the resolution passed in its Board

meeting.

8. Since about 10,000 of the members of these 11 societies could not be accommodated as they did not apply within the time schedule for

allotment of the developed plots, the Federation of Co-operative Housing Societies requested the NOIDA to consider such cases and also to

accommodate such members by allotting land to them. Since the NOIDA did not agree to this, a writ petition was filed in the Supreme Court

which passed an order dated 9.12.1987 vide Annexure-D to the writ petition. As is evident from this order, since there was a dispute regarding

the area of the land which was acquired from the Housing Societies the Supreme Court directed the District Judge, Ghaziabad to examine the

papers and submit a report. The report of the District Judge, Ghaziabad is Annexure-E to the writ petition. Thereafter by another order dated

13.1.1990, the Supreme Court directed the NOIDA to release 96.29 acres of land to the left out members numbering 2380 of the aforesaid 11

Co-operative Societies. In addition, the Supreme Court directed that 0.71 acres of land should also be set apart in order to meet the claim of the

persons separately vide Annexure-F to the writ petition.

9. It is alleged in Paragraph 20 of the writ petition that the above facts show that the respondent allotted the land to the members of the Co-

operative Housing Societies to the extent of 40% of the total land acquired by these societies and this principle was approved by the Supreme

Court. In the matter of the 12th Co-operative Housing Society viz., U.P. Residents Employees Co-operative Housing Building Society, the same

principle was approved vide Uttar Pradesh Residents Employees Co-operative House Building Society and others Vs. The New Okhla Industrial

Development Authority and another, The same principle was also followed for the 13th Society viz., Rajdhani Co-operative House Building

Society as stated in Paragraph 22 of the writ petition.

10. As regards the petitioner Society, the same was incorporated in 1975 whereas the NOIDA came into existence in 1976. The petitioner

Society started purchasing land immediately after its incorporation from funds contributed by its members. In Paragraph 28 of the writ petition it is

stated that in the year 1977-78 the petitioner Society made repeated representations to NOIDA for release of 40% of the land as in the cases of

other societies and requested the NOIDA to approve the layout plan so that allotment could be done. Since, the NOIDA did not agree to this

request the petitioner filed a writ petition in this Court which was dismissed. Aggrieved the petitioner filed an SLP in the Supreme Court in which

the Supreme Court passed the following order :

The question of allotment of sites to the members of the Society does not arise as their land had not yet been acquired.

11. Subsequently the State Government by notification published on 27.2.1988 u/s 4 of the Land Acquisition Act, proposed to acquire the land of

the Society and thereafter the land was acquired. The petitioner Society approached the respondent for allotment of developed plots to its

members in view of this land acquisition and its representatives visited NOIDA on several occasions and made representations vide Annexure-I to

the writ petition but to no avail. For the first time on 25.4.1994, the respondent called the petitioner Society to visit the office of the Deputy Chief

Executive Officer, NOIDA on 29.4.1994. On that date the petitioner was asked to furnish certain details, which were submitted on 30.4.1994.

The petitioner also forwarded all the relevant documents such as registration certificate of the Society etc. and sent reminders.

12. In Paragraph 43 of the writ petition it is stated that the respondent after having carefully scrutinized and verified the sale-deeds submitted by the

petitioner relating to title to 292 bighas of the land in the name of the petitioner Society issued a letter dated 12.8.1994 to the petitioner for

allotment of land to its members on the terms and conditions mentioned therein. These terms and conditions are reproduced in Paragraph 43 of the

writ petition. A perusal of the said letter shows that the NOIDA informed the petitioner that its request has been considered and it has been

decided to allot residential plots to the members on certain terms mentioned therein. On receiving this letter the petitioner communicated it to its

members and also gave wide publicity to it so as to avoid any dispute or discrepancy at a later stage. The petitioner also prayed for extension of

time to permit the members to deposit the required amount. The NOIDA extended the date for completing the formalities upto 15.4.1994, vide

Annexure-J. In Paragraphs 47 and 48 of the writ petition it is stated that the petitioner in compliance of the offer of allotment submitted the title

deeds of the land and submitted the list of its members duly verified by the Competent Authority, within the time limit 1754 members of the

petitioner Society deposited 40% of the cost of the land within the time limit in terms of the allotment letter dated 12.8.1994. A sum of

approximately Rs. 19 crores was deposited with the respondent representing 40% of the demanded cost of the land as reservation money.

Thereafter the members of the petitioner deposited another sum of Rs. 17 crores alongwith interest and those who had delayed the payment were

required to pay 24% interest. In Paragraph 50 of the writ petition it is stated that the respondent has already accepted more than Rs. 36 crores till

the year 1996 from the members of the petitioner Society.

13. In Paragraph 51 of the writ petition it is stated that the respondent having been fully satisfied with the genuineness of the members as per the list

submitted and also about the land having been purchased by the petitioner issued allotment letters to 1754 members of the petitioner Society and

also sent one proforma affidavit to be executed by each member of the petitioner vide Annexure-K to the writ petition.

14. In Paragraph 53 of the writ petition it is stated that the petitioner vide letter dated 26.7.1995 requested the respondent not to accept the first

instalment towards the land so allotted directly from the members of the petitioner Society unless verified by the petitioner as there appeared to be

certain discrepancy detected subsequently in the membership of the Society and the petitioner Society stated that it will not be responsible if the

first instalment is accepted directly by the respondent. However, the respondent paid no heed to the submission of the petitioner and accepted the

first instalment and also two more instalments totalling Rs. 17 crores without the knowledge, consent or approval of the petitioner.

15. It is alleged in Paragraph 55 of the writ petition that the respondent by letter dated 26/17.7.1995 asked the petitioner to furnish some more

information regarding its members and petitioner communicated these details. Out of 1754 of its members only 870 members submitted these

details to the petitioner which were forwarded by it to the respondents. Thereafter the respondent by public notice dated 25.6.1996 called upon

the members/allottees of the petitioners Society to furnish information required in its letter dated 26/27.7.1995, in response to which about 900

members communicated this information directly to the respondents. Thereafter by letters dated 1.5.1996 and 21.6.1996, the respondent asked

the petitioner to furnish some more information, which according to the petitioner was neither necessary nor relevant and it had not been asked for

from other societies placed similarly. Moreover, as alleged in Paragraph 58 of the writ petition, the respondent continued to accept half-yearly

instalments directly from the members of the petitioner Society and the amount so collected was neither intimated to the petitioner nor request

made by the petitioner in terms of its letter dated 26.7.1995 were complied with by the authorities.

16. It is alleged in Paragraph 59 of the writ petition that in the month of June/July, 1996, on account of certain differences among the members of

the Executive Committee of the petitioner Society some of the members fraudulently carried away with them the records of the Society. This fact

was published in the newspaper "Dainik Jagran" and other newspapers on account of which the District Magistrate, Ghaziabad locked the office of

the petitioner Society and the office remained closed for about six months and it was in January, 1997, when Shri R.C. Yadav, Additional Co-

operative Officer, Ghaziabad took charge of the affairs of the petitioner Society that it was opened. Subsequently, Deputy Registrar, Co-operative

Society, Meerut by order dated 19.3.1997, constituted a Board of three persons for looking after the affairs of the Society vide Annexure-L to the

writ petition. Pursuant thereto a fresh election of the Managing Committee of the petitioner was held on 29/30.4.1997, under the direct supervision

of the Assistant Registrar, Co-operative Societies and District Magistrate, Ghaziabad and the newly elected committee started the process of

compiling the records of the petitioner Society. While the process of recompiling and reconstruction of the records was in progress a show cause

notice dated 8.7.1997, was received from the respondent vide Annexure-M to the writ petition which was duly replied by the petitioner vide letter

dated 28.7.1997. This reply was accompanied by 32 Annexures, some of which have been annexed to this writ petition. The petitioner then

submitted some further documents relating to the membership, details of purchase of land, etc. and sought time for furnishing the remaining

documents. The petitioner by letter dated 27.8.1997, submitted details of the members enrolled between 1.4.1987 to 31.5.1987, but the

respondent asked the petitioner to furnish further details within a month vide Annexure-N to the writ petition. The petitioner submitted further

information as asked for vide letter copies of which are Annexure-0 to the writ petition. The petitioner Society in terms of letter dated 13.10.1997

furnished the detailed reply to the report of the Deputy Chief Executive Officer, NOIDA and controverted the allegations against the petitioner in

the said report.

17. It is alleged in Paragraph 67 of the writ petition that the said report was a unilateral and arbitrary device to harm the petitioner Society. Neither

any information nor any opportunity to show cause was ever provided to the petitioner by the Deputy Chief Executive Officer, NOIDA and it is

alleged in Paragraph 68 of the writ petition that the report is based on extraneous considerations besides being biased vide Annexure-P to the writ

petition.

18. In Paragraph 69 of the writ petition it is alleged that the petitioner Society had become conscious that the respondent for vested interest was

not dealing in a straightforward manner with the petitioner Society and the matter was being made complicated so that there may remain an

atmosphere of chaos and confusion. The respondent was already having Rs. 36 crores at its disposal and was in search of some lame excuses

whereby the respondent could escape from its commitments. The respondent with this intention created all kinds of problems, hurdles and

obstacles in the proper functioning of the Society. In Paragraph 71 of the writ petition it is alleged that the petitioner vide letter dated 13.10.1997

informed the respondent that the President and Treasurer of the petitioner Society had submitted documents in order to facilitate the petitioner to

complete its report. A request was made to the respondent to permit them to have copies of the report. However, the respondent did not permit

the same.

19. In Paragraph 72 of the writ petition it is stated that the petitioner had consistently been writing to the respondent and had informed that the

detailed reply to the show cause notice had already been submitted and in case, the respondent felt that any deficiency exists the petitioner may be

informed accordingly and personal hearing be given. However, despite these requests and reminders the respondent maintained unprecedented

silence. Copies of the letters in this connection are Annexure-Q to the writ petition.

20. In Paragraph 73 of the writ petition it is alleged that after a long silence the respondent wrote the impugned letter dated 5.5.1998 cancelling the

allotments vide Annexure-R to the writ petition.

21. In Paragraph 74 of the writ petition it is alleged that the allegation in the impugned order that the petitioner Society had misrepresented and

suppressed material facts with regard to furnishing of correct data of the land mutated and compensation received was baseless. It is an admitted

fact, that the petitioner has purchases 292-12-17 bighas of land in the notified area of the respondent.

22. In Paragraph 76 of the writ petition it is stated that there is discrimination against the petitioner because while allotting land to the 13 societies

mentioned hereinbefore the respondent had always taken the stand of allotting 40% of the acquired land in respect of each Society and while doing

so the aspect of mutation and/or compensation paid had neither been considered nor relied upon. This was the first instance where the respondent

authority discriminately and arbitrarily had resorted to the question of mutation of land and/or compensation received.

23. In Paragraph 77 of the writ petition it is stated that on the scheduled date and time a joint meeting was held between the petitioner and the

respondent in which the matter and demand of the petitioner was discussed at length. In Paragraph 78 of the writ petition it is alleged that it is a

mockery of the entire system that some of the members of the petitioner Society are awaiting allotment of land from 1975. The petitioner Society

had purchased 292-12-17 bighas land in the notified area of the respondent and out of the said land the petitioner had got mutated land to the

extent of 108-08-15 bighas. Out of this land the petitioner Society received compensation of land measuring 34 -11 - 65 bighas.

24. In Paragraph 80 of the writ petition it is alleged that in terms of Sections 54 and 167 of the U.P.Z.A. and L.R. Act, the land measuring 65 - 07

- 19 bighas was alleged to be covered under the land ceiling in favour of the State Government. The petitioner challenged the imposition of the land

ceiling in the Court of the A.D.M., Finance, Ghaziabad who decided it against the petitioner and the appeal filed before the Additional

Commissioner also failed but revision against that order is pending before the Board of Revenue, Allahabad and by interim order dated 19.9.1995

it was directed that the petitioner shall not be dispossessed during the pendency of the revision. Hence, the matter regarding mutation of the land

measuring 65-07-19 bighas is pending adjudication before the Board of Revenue and is subjudice vide Annexure-S to the writ petition.

25. In Paragraph 84 of the writ petition it is stated that the land measuring 184-04-09 bighas purchased by the petitioner could not be mutated in

his favour because of the notification dated 27.2.1988 issued by the State Government u/s 4 of the Land Acquisition Act, followed by the

notification u/s 6 dated 14.12.1989.

26. Against the cancellation order proceedings have also been filed before the Monopolies and Restrictive Trade Practices Commission, New

Delhi vide Paragraphs 87 to 107 of the writ petition. In Paragraph 109 of the writ petition it is alleged that the respondent has collected more than

Rs. 36 crores from the allottees/members of the petitioner Society towards the allotment of developed plots in Sector 42 and 43 NOIDA.

Although, Sector 42 has not been specifically included but it is impliedly covered when the respondent has mentioned Sector 43 and nearby

sectors in its various letters.

27. It is alleged in Paragraph 111 of the writ petition that the principle of promissory estoppel applies in this case and the respondent has resorted

to colourable exercise of power to rescind from its obligation. It is further stated that there is no material concealment by the petitioner Society and

in fact the petitioner Society had without any delay submitted all the papers as required by the respondent.

28. A counter-affidavit has been filed on behalf of NOIDA. It is alleged in Paragraph 8 of the same that all the decisions/reports of Khodaiji

Committee were confined to the societies which had purchased lands much before the creation of NOIDA, It is alleged that the petitioner"s claim

has already been rejected by the Supreme Court by judgment dated 28.10.1987 and hence, the petitioner cannot claim any relief on the basis of

various decisions taken by NOIDA in 1976 and 1979 or of the report of the Khodaiji Committee. In Paragraph 9 it is stated that the letter of the

NOIDA dated 21.4.1980 was neither addressed to the petitioner nor was intended to be made applicable to the members of the petitioner

Society. The said letter was addressed to the societies whose land had been purchased prior to the establishment of the NOIDA and it has no

application to the petitioner. It is denied that any order for allotment of land in favour of the petitioner Society was ever passed. It is alleged in

Paragraph 12 that at the time of establishment of NOIDA the petitioner Society had by then purchased a very small area of the land after it came

into existence in 1975. In Paragraph 15 it is stated that the petitioner had falsely claimed in its letter dated 30.4.1994, that it is the owner of 292 -

12 -17 bighas of land and on that basis it claimed allotment of 40% of the said area.

29. In Paragraph 17 of the counter-affidavit it is stated that the NOIDA relied upon the various representations made by the petitioner and

considering them to be correct proceeded to allot 40% of 292-12-17 pucca bighas of land to the members of the petitioner Society. It is alleged

that subsequently the record was got confirmed by the NOIDA which shows that the petitioner was owner of only 34-11-6.75 bighas and for this

area the petitioner Society has received compensation from the State. Out of the 292-12-17 pucca bighas land which the petitioner claimed as its

own it was found that 118 bighas belong to other tenure holders who had already received compensation from the State. Moreover 65-12-19

bighas was declared to be excess in ceiling laws and hence, it did not belong to the petitioner. The remaining 4-9-12 bighas is also not owned by

the petitioner.

30. In Paragraph 18 of the counter-affidavit it is alleged that the respondent acted on the misrepresentation that the petitioner is owner of 292-12-

17 pucca bighas of land and on that basis proceeded to allot plots in favour of different persons who were claimed by the petitioner to be its bona

fide members. The respondent was misled by the petitioner inasmuch as it was neither the owner of 292-12-17 pucca bighas of land nor 1754

persons were its genuine and bona fide members. In Paragraph 21 it is stated that the respondent demanded relevant information from the Society

which was not provided. In Paragraph 23 it is stated that the respondent received widespread complaints and consequently issued various letters

from time to time demanding various details about membership etc. Moreover, after the award of the Special Acquisition Officer various facts

came to the notice of the respondent that the petitioner committed fraud and misrepresentation and a report was received from the Collector,

Ghaziabad dated 24.1.1997 to tin"s effect. Hence, the show cause notice was rightly issued on 8,7.1997. True copy of the report of Dr. Prabhat

Kumar, Deputy Executive Officer, NOIDA is Annexure C.A. 1. It is denied that no opportunity of hearing was given to the petitioner.

31. A rejoinder-affidavit has also been filed and we have perused the same. In Paragraph 4 it is alleged that the petitioner Society was a duly

registered Society having its Registration No. 2154 by the Deputy Registrar, Co-operative Societies, U.P. dated 10.2.1975 vide registration

certificate Annexure-1 to the rejoinder-affidavit. The Society was constituted with the primary object of acquisition of land and development of the

same and allotment thereafter to its members for construction of their residential units. In Paragraph 5 it is alleged that after the registration the

Society started purchasing land in question in village Chhallera (NOIDA) from the funds contributed from the members of the Society. True copy

of the sale-deeds relating to the year 1975 and onwards are Annexure-2 to the rejoinder-affidavit. In Paragraph 6 it is stated that between 1967 to

1976 there were 16 Co-operative Housing Societies including the petitioner Society which were equally placed as all the Housing Societies were

constituted with the primary object to provide residential plots /houses to its members. In Paragraph 8 it is stated that initially 37 villages were

notified but subsequently additional villages were notified for the constitution of the industrial area of NOIDA.

32. In Paragraph 9 it is stated that the claim of the petitioner Society was rejected by the Supreme Court only on the ground that at that time the

petitioners land was acquired and therefore, the question of allotment of alternative sites to the members of the petitioner Society did not arise.

True copy of the judgment of the Supreme Court is Annexure-H to the writ petition. It is alleged that the respondent had made applicable the

Khodaiji Committee report in the case of other Co-operative Housing Societies as well as the petitioner Society as is evident from the order dated

5.5.1998 which is impugned in the writ petition. In Paragraph 10 it is stated that as per Khodaiji Committee report the respondent has followed the

allotment criteria of allotting 40% of the acquired land of each Co-operative Housing Society. The allotment should have been made taking into

consideration the Khodaiji Committee report and as per direction of the Supreme Court. The respondent authority had allotted the land to the

members of the other similarly situated Co-operative Housing Society to the extent of 40% of the total acquired land as per the direction of the

Supreme Court. In the matter of 12th Co-operative Housing Society i.e., UP. Residents Employees Co-operative Housing Building Society the

same criteria of allotment of 40% of the total acquired land was further approved by the Supreme Court vide Uttar Pradesh Residents Employees

Co-operative House Building Society and others Vs. The New Okhla Industrial Development Authority and another, . The Supreme Court has

also taken into consideration the letter dated 21.4.1980 of the respondent while issuing the direction for allotment of 40% of the total acquired

land. It is alleged that the same direction of the Supreme Court in cases of other societies are fully applicable to the petitioner Society also. It is

alleged that the petitioner Society was incorporated in 1975 whereas the respondent authority was constituted in 1976. As such the provisions of

the Act, cannot have retrospective effect. The claim of the petitioner was rejected by the Supreme Court only on the ground that the land of the

petitioner had not been acquired by that time. Hence, there was no allotment of sites to the members of the petitioner Society.

33. In Paragraph 14 of the rejoinder-affidavit it is alleged that the State Government issued notification u/s 4 of the Land Acquisition Act, published

on 27.2.1988 to acquire the land of the petitioner Society for the development of NOIDA, Thereafter the notification u/s 6 was also issued on

14.12.1989 for acquiring the land including that of petitioner Society and other societies. After the said land of the petitioner was acquired in 1989

the petitioner continuously approached the respondent to allot the land to its members as per policy laid down by the respondent as has been

applied in respect of other societies similarly situated. For the first time by letter dated 25.4.1994, the NOIDA directed the petitioner Society to

furnish certain details and this letter was complied with by the petitioner vide letter dated 30.4.1994. Thereafter on 14.6.1994, the petitioner

Society was further directed to furnish more information. In compliance the petitioner furnished photocopies of the sale-deed of 292-12-173/4

bighas of land which was purchased by the Society out of the funds collected from its members which was acquired for the NOIDA by the State

Government.

34. In Paragraph 16 it is stated that the Supreme Court rejected the petitioner's claim only on the ground that the land of the petitioner Society

was not acquired at that time. This land was acquired in 1989 and hence, the petitioner Society approached the respondent for allotment of sites.

Hence, the Supreme Court order does not come in the way of the petitioner's claim. In Paragraph 17 of the rejoinder-affidavit it is stated that the

respondent took more than five months to verify all the documents and after satisfying itself on the various aspects issued allotment order on

12.8.1994 to provide land to the members of the petitioner Society vide Annexure 3 to the rejoinder-affidavit. It is stated that there was no

misrepresentation by the petitioner and the sale-deeds filed by it were abundantly clear. The details are given in Paragraph 17 of the rejoinder-

affidavit.

35. As regards 65-12-19 bighas of land it is stated that the provisions of Section 167 read with Section 154(2) of the U.P.Z.A. and L.R. Act are

not applicable in the case of the petitioner as the same is applicable to individual tenure holders vide judgment of the Division Bench of this Court in

Lokpriya Housing Society v. State of U.P. (Civil Misc. Writ Petition No. 20518 of 1992, decided on 6.5.1997) (Annexure R.A. 54). In this

Division Bench decision it has been held that Section 154 applies only to individual tenure holders and not to a Society.

36. In Paragraph 17 of the rejoinder-affidavit it is also stated that the respondent verified the land records through the Tehsildar, NOIDA and

again verified the land through the Administrative Officer, NOIDA in respect of the land records submitted by the petitioner. After verifying the

sale-deeds furnished by the petitioner Society the Tehsildar, NOIDA submitted his report on 2.12.1994 before the Administrative Officer,

NOIDA which is as follows :

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vkids funsZ"kkuqlkj xzke Nysjk ckaxj esa dsUnzh; deZpkjh lgdkjh x`g fuekZ.k lfefr fyfeVsM] uks,Mk }kjk izLrqr Hkwfe lEcU/kh

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gS A lfefr }kjk dqy {ks=Qy 292&12&17 3@4 Hkwfe $\tilde{A}^{-}\hat{A}_{\hat{A}^{1/2}}$; dh x;h gS] ftlesa 0&2&0 xzke lekt Hkwfe Hkh "kkfey gS vr% vfxze vkns"k ,oa

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37. It is stated in Paragraph 18 of the rejoinder-affidavit that after scrutinizing all the papers submitted by the petitioner Society and being satisfied

about its allotment orders were issued in favour of the individual members of the petitioner Society as per the guidelines framed by the respondent in

accordance with the Khodaiji Committee report and there was no misrepresentation. In Paragraph 21 it is submitted that the petitioner submitted

each and every detail to the respondent. the genuineness of the members of the petitioner Society has been verified by the Assistant Registrar, Co-

operative Society, which is the Competent Authority in respect of the societies.

38. In Paragraph 23 of the rejoinder-affidavit it is stated that in respect of members of the Society a duly attested list of 2144 members was

submitted by the petitioner before the respondent and the same was verified by the Committee of three members constituted by it who gave its

report dated 18.4.1997 to the Office Superintendent. The relevant part of the report is as follows :-

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Å⁻ Å₂i;k fodkl izcU/kd Å⁻ Å₂vk- Hkw-Å⁻ Å₂ egksn; ds lkFk vkids lkeus gqbZ okrkZ
dk lanHkZ xzg.k djsa A izklr 2144 lnL;ksa dh lwph dks

dEI;wVj foHkkx cMokj lwph ds :i esa djok fy;k x;k gS] tks layXu vLFkk;h doj esa yxh gS A
2144 lnL;ksa dh lwph dk voyksdu djus ds mijUr

ik;k x;k fd 1754 vkoaVh lnL;ksa ds uke mDr lwph esa fn;s x;s gSa A

mijksDr ds vfrfjDr ;g Hkh voxr djuk gS fd fodkl izcU/kd egksn; }kjk miyC/k dj;k x;h 546
lnL;ksa dh lwph dk 2144 lnL;ksa dh lwph ls feyku

djus ij ik;k x;k fd mDr lwph ds yxHkx 300 lnL; 2144 lnL;ksaa dh lwph esa ugha gSa A

i=koyh vfxze vkns"kkFkZ lknj izLrqr gS A

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39. In Paragraphs 27 and 29 of the rejoinder-affidavit it is stated that the Tehsildar, NOIDA has found in his report that the petitioner Society is

the owner of the land in question being 292-12-17-3/4 bighas of land on the basis of the sale-deeds submitted by it. Hence, there is no question of

misrepresentation in respect of 65 bighas proceedings regarding which are pending before the Competent Court.

40. On the facts of the case we are of the opinion that this petition deserves to be allowed.

41. It may be noted that the order of the Supreme Court dated 28.10.1987 dismissing the petitioner's SLP itself states that the question of

allotment to the members of the petitioner society did not arise as the land of the Society had not been acquired by that time. In our opinion, this

order of the Supreme Court does not come in the way of the petitioner's claim because admittedly the petitioner's land was subsequently acquired

in 1989.

42. We have carefully perused the impugned order Annexure-R to the writ petition. It has been stated therein that the petitioner made

misrepresentation and suppressed material facts. It is alleged therein that it was found that on 234-11-6.75 bighas of the land of the Society had

been acquired by the NOIDA and the Society had received compensation only for the said land under the Land Acquisition Act. It is alleged that

this fact was suppressed by the petitioner Society and it was misrepresented to NOIDA that a total of 292-12-17.75 bighas of land of the

Society had been so acquired. It is alleged that this was a deliberate falsehood by the petitioner and NOIDA was misled by it in allotting more land

to the Society than it was entitled. The District Magistrate, Ghaziabad after enquiry gave details of the actual land of the Society which was

acquired for NOIDA. It was known to the Society that 65-12-19 bighas of land has vested in the State Government under the U.P.Z.A. and L.R.

Act and the dispute was pending before the Board of Revenue but this fact was suppressed. It was also within the knowledge of the Society that

compensation of 118-3-5 bighas of land had been paid to the farmers but this fact was suppressed. By these wrong facts the Society had obtained

land from NOIDA in excess.

43. It may be noted that the impugned order states that the Khodaiji Committee report, which was accepted by the respondent, is applicable to

the petitioner Society also. Thus, there is no dispute that the Khodaiji Committee Report (as modified) and the decision of the NOIDA to allot

40% land to the members of the Co-operative Housing Societies including petitioner is applicable to the petitioner Society also.

44. The only question is whether there was any misrepresentation by the petitioner.

45. It is well-settled that mutation neither confers nor discharges any rights vide *Nirain Singh v. Lai Rudra Pratap Narain Singh* AIR 1926 PC 100

; *Smt. Sawarni Vs. Smt. Inder Kaur and Others*, ; *Balwant Singh and another etc. Vs. Daulat Singh (dead) by L.Rs. and others*, ; *M.T.W. Tenzing*

Namgyal and Others Vs. Motilal Lakhota and Others,

46. In *Hiralal Chawla and Another Vs. State of U.P. and Others*, , the Supreme Court while considering the case of a Society similar to that of the

petitioner held that even if mutation entry has not been made in favour of the petitioner in pursuance of the safe-deeds, the Society was entitled for

allotment of 40% of the total area acquired. The same view was taken in Uttar Pradesh Residents Employees Co-operative House Building

Society and others Vs. The New Okhla Industrial Development Authority and another,

47. In view of the above discussion it is evident that mutation is not material. The petitioner Society had filed registered sale-deed in respect of land

measuring 292-12-17.75 bighas prior to the cut-off date. It is the registered sale-deed and not the mutation which confers title. Hence, in our

opinion, the petitioner has to be treated like other housing societies which were given benefit of the Khodaiji Committee Report in allotting 40%

acquired land. By denying the petitioner's claim there is discrimination against the petitioner and violation of Article 14 of the Constitution.

48. It was urged by the learned Counsel for the respondent that whether there was misrepresentation or not is a disputed question of fact and

hence this Court should not exercise its jurisdiction under Article 226 of the Constitution in this case. We do not agree. It has been held by the

Supreme Court in Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, , that;

The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to

relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law.

49. Similarly, in Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others, , a similar view was taken. No doubt exercise of jurisdiction

under Article 226 is discretionary and the High Court may, if it so chooses, refuse to exercise its jurisdiction under Article 226 on the ground that

there are disputed questions of fact in the case, but this does not mean that the High Court is debarred from exercising its jurisdiction under Article

226 whenever there are disputed questions of fact. It is in the discretion of the High Court to exercise its jurisdiction or not, even if there are

disputed question of fact and in this case we are inclined to exercise our discretion under Article 226 as we are of the opinion that the respondent

has acted wholly arbitrarily and illegally and has discriminated against the petitioner.

50. It may be mentioned that before making the allotment the authorities verified the facts and examined the sale-deeds. The Tehsildar and

Administrative Officer of NOIDA submitted reports (as already mentioned above) and verified that the Society had purchased 292-12-17.75

big has land, As regards withdrawal of compensation by the farmers, it may be mentioned that this is the matter between the petitioner and those

farmers. We cannot understand what NOIDA has to do with it. After making sale-deeds by registered documents, the farmers did not retain any

title to the land and it seems that they illegally withdrew the compensation for the land which they did not own.

51. It may be mentioned that merely because compensation has been granted to the farmers (from whom the petitioner purchased the land) by the

Land Acquisition Officer, this does not mean that the petitioner did not own the land. Under the Land Acquisition. Act, the Collector has no power

to adjudicate upon the title of the land. That matter has to be decided by a separate civil suit vide Dr. G.H. Grant Vs. State of Bihar, . The same

view was followed by the Supreme Court in Sunder Lal Vs. Paramsukhdas, ; Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho

(dead) by LR"s., ; Karanpura Development Company Vs. Union of India (UOI) and Others, ; Sharda Devi Vs. State of Bihar and Another, etc.

52. A person may be a person interested and claim apportionment of compensation though he may not have title over the land, e.g., a tenant, sub-

tenant, occupiers, etc. A person may be interested even though he has no title to the land. The Land Acquisition Act refers to a "person interested"

and not owner of the land. As held by the Full Bench of this Court in Hussaini Begam v. Hussaini Begam ILR (1985) All. 573, even a person who

has an agreement to sell in his favour prior to the notification u/s 4 of the Land Acquisition Act may be a person interested and claim compensation.

The tenants by will, mortgagees, occupiers etc. may be persons interested depending on the facts and circumstances of the case. The Collector

who is the authority under the Land Acquisition Act cannot determine title. Merely because compensation had been withdrawn by someone else it

cannot be said that the petitioner is not the owner of the land. Hence, even if compensation had been withdrawn by the farmers who sold the land

to the petitioner Society, this was a matter between those farmers and the petitioner and the petitioner has right to recover compensation paid to

such farmers by filing a suit or taking other legal action. This, however, will not deprive the petitioner's members from getting allotment of the land

by NOIDA. It appears that fraud was committed by the farmers who fraudulently withdrew the compensation after executing the registered sale-

deeds in favour of the petitioner Society. The petitioner being a bonafide purchaser through registered sale-deeds cannot in our opinion be

deprived of the right of allotment.

53. Moreover, in the instant case, the Board of Revenue has restrained the respondents, from dispossessing the petitioner Society from the said

allotment and the matter is subjudice. In Lokpriya Housing Society v. State of U.P. (Writ Petition No. 20518 of 1992, decided on 6.5.1997), a

Division Bench of this Court examined the question of application of Section 167 read with Section 154(2) of the U.P. Zamindari Abolition and

Land Reforms Act, 1951 and held that these provisions applied to individual tenure holders and not to societies, vide Annexure R.A.-4 to the

rejoinder-affidavit. The Court placed reliance upon its earlier Division Bench judgment of this Court in Kasturi Sanyukt Sahkahi Samiti Ltd. v. State

of U.P. and Ors. (Writ Petition No. 7111 of 1988, decided on 16.3.1989) and held that Section 154 applies only to the land held by individual

tenure holders and not to the land belonging to a society.

54. Hence, in view of the above, we are of the firm opinion that the respondent was not justified in not considering the said area of 65-12-19

bigas. Undoubtedly, in this case a revision is still pending before the Board of Revenue, but in view of the aforesaid two Division Bench decisions

of this Court, we cannot see what useful purpose the revision will serve. After all, the Board of Revenue is an authority subordinate to this Court

under Article 227 of the Constitution and it is bound by the decisions of this Court.

55. As regards the contention about genuineness of the membership of the petitioner, in our opinion, this point cannot be raised at such a belated

stage particularly when the membership has already been verified by the Competent Authority under the U.P. Co-operative Societies Act. These

appear to be just lame excuses mentioned in the impugned order to enable NOIDA to avoid its obligations. The respondent accepted 40% of the

amount from the individual members and further instalments totalling over Rs. 36 crores and it cannot be permitted to now raise such kinds of

frivolous objection at this late stage.

56. Moreover, this objection of genuineness of the members has not been raised in the impugned order. As held by the Supreme Court in

Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, and in Commissioner of Police, Bombay Vs.

Gordhandas Bhanji, , the respondent cannot raise a fresh ground in the counter-affidavit which is not mentioned in the impugned order. The validity

of the impugned order has to be judged by the reasons mentioned in that order and cannot be supplemented by fresh reasons in the shape of an

affidavit or otherwise.

57. In our opinion, the NOIDA acted in a highly arbitrary manner and has discriminated against the petitioner since, other societies were given the

benefit claimed by the petitioner. 11 Societies mentioned in the writ petition were granted the benefit of the Khodaiji Committee report which was

accepted by NOIDA with some modifications and so was the 12th Society viz., Uttar Pradesh Residents Employees Co-operative House Building

Society and others Vs. The New Okhla Industrial Development Authority and another, and also the 13th Society viz., Rajdhani Co-operative

Housing Building Society.

58. The doctrine of promissory estoppel, first propounded in our country in Union of India v. Anglo Afghan Agencies AIR 1968 SC 718 and

subsequently followed in a series of decisions e.g. Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, ; Pournami Oil

Mills and Others Vs. State of Kerala and Another, etc., applies to the facts of the case.

59. The doctrine of promissory estoppel squarely applied in this case, as the petitioner Society and its members had acted on the representation of

the respondent and made deposits and were issued allotment orders. They had deposited Rs. 36 crores and instalments. Suddenly they have been

left in the lurch by the impugned order.

60. In H.C. Venkataswami v. Bangalore Development Authority 2001 (9) SCC 2004, the Supreme Court observed, that "it was neither fair nor

just on the part of the Bangalore Development Authority to have gone back on their decision which was taken with an open mind".

61. This decision squarely applies to the facts of the present case. As stated in Paragraph 43 of the writ petition, the respondent authority after

having carefully scrutinized and verified the sale-deeds and other papers submitted by the petitioner relating to title to 292 bighas issued a letter to it

dated 12.8.1994 for allotment of land to the members of the petitioner. On receiving this letter petitioner communicated it to its members and gave

it wide publicity. 1754 of petitioner's members deposited 40% of the cost of the land within the time limit. NOIDA accepted over Rs. 36 crores

from the petitioner Society, being satisfied about the genuineness of the members and the sale-deeds and issued allotment letters to 1754 members

of the petitioner. In these circumstances NOIDA cannot now be allowed to arbitrarily back out from its solemn undertaking, both because of the

principle of promissory estoppel and fairness in action by the authorities.

62. In M/s. Tandon Brothers Vs. State of West Bengal and Others, , the Supreme Court, elaborating on the principle of promissory estoppel and

fair play in State action, has held that there has to be justifiable material before the Government to review its earlier decision.

63. In Pawan Alloys and Casting Pvt. Ltd. v. U.P.S.E.B. 1997 (7) SCC 259, the Supreme Court observed :

If a Statutory Authority or an Executive Authority of the State functioning on behalf of the State in exercise of its legally permissible powers has

held out any promise to a party, who relying on the same has changed its position not necessarily to its detriment and if this promise does not

offend any provision of law or does not fetter any legislative or quasi-legislative power inhering in the promisor, then on the principle of promissory

estoppel the promisor can be pinned down to the promise offered by it by way of representation containing such promise for the benefit of the

promisee.

64. In Punjab Communications Ltd. Vs. Union of India and Others, , after referring to various decision of its own which considered the principle of

legitimate expectation the Supreme Court observed :

The above survey of cases shows that the doctrine of legitimate expectation in the substantive sense has been accepted as part of our law and that

the decision maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or past

conduct unless some overriding public interest comes in the way.

65. In our opinion, the doctrine of legitimate expectation is also applicable in this case as NOIDA had given legitimate expectation to the petitioner

Society that they will be allotted land.

66. In Navjyoti Coo-Group Housing Society etc. Vs. Union of India and Others, , it was held that Group Housing Societies were entitled to

legitimate expectation in the matter of allotment even though they may not have any legal right in private law to receive such treatment.

67. Since a sum of Rs. 36 crores was deposited by 1996 by the members of the petitioner Society through the petitioner or directly with the

NOIDA, it is obvious that the NOIDA must have earned interest on that amount. Hence, we direct NOIDA to explain to the representatives of the

petitioner as to where it had deposited/invested this Rs. 36 crores and how much interest was earned on this amount and the interest must be

returned to the petitioner within two months from today and the petitioner shall handover the interest to its members in accordance with their

deposits. Alternatively, instead of returning the amount of interest to the petitioner, the NOIDA may adjust this amount of interest towards the next

instalments.

68. Since it was the NOIDA to blame for the inordinate delay in the matter we direct that the possession of the developed plots shall be handed

over to the members of the petitioner Society latest within three months from today, but the instalments may be deposited by the petitioner or its

members as per the original schedule assuming that the schedule commences from today.

69. For the reasons given above, the petition is allowed. The impugned order dated 5.5.1998 (Annexure-R) is quashed. The respondent is

directed to allot the land in question to the members of the petitioner Society in Sector 42 and 43 of NOIDA forthwith.